No. 3825

United States
Circuit Court of Appeals
For the Ninth Circuit.

LOUIS STRADA,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

FILED
JAN 9 - 1922
F. D. MONCKTON,
CLERK

PARKER & STONE CO., Law Printers, 232 New High St., Los Angeles, Cal.

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Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiff in Error:

A. L. WISSBURG, Esq.,
JAS. E. O'KEEFE, Esq., and
C. H. VAN WINKLE, Esq., 411-14 Southern Title Building, San Diego, California.

For Defendant in Error:

JOE BURKE, Esq., United States Attorney for Southern District of California;
HERBERT N. ELLIS, Esq., Assistant United States Attorney, Federal Building, Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

No. 3287 Crim.

The United States of America,)
)
Plaintiff,)
)
vs.) CITATION
)
LOUIS STRADA,)
)
Defendant.)

United States of America,)
Sou. District of California) SS
Southern Division.)

TO THE UNITED STATES OF AMERICA:
GREETINGS:

YOU ARE HEREBY CITED AND ADMONISHED TO BE AND APPEAR, at a United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to Writ of Error filed in the Clerk's Office of the District Court of the United States for the Southern District of California, Southern Division, in that certain case numbered 3287 Criminal, in said District Court, wherein Louis Strada, is plaintiff in Error, and you are defendant in error, to show cause, if any there be, why the judgment given, made and

entered against Louis Strada, plaintiff in error in said Writ of Error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS THE HONORABLE BENJAMIN F. BLEDSOE, United States District Judge, for the Southern District of California, Southern Division, this 9th day of November, 1921.

Bledsoe
United States District Judge

(ENDORSED) No. 3287 Crim. In the District Court of the United States for the Southern District of California Southern Division The United States of America, Plaintiff, vs. Louis Strada, Defendant. CITATION C. E. Burch and A. L. Wissburg, Attorneys for Defendant. Filed Nov 9 1921 *Chas. N. Williams, Clerk* Douglas Van Dyke *Deputy.*

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

No. 3287 Crim.

The United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	WRIT OF
	)	ERROR.
LOUIS STRADA,	)	
	)	
Defendant.	)	
	)	

THE UNITED STATES OF AMERICA,)
)SS
SOUTHERN DISTRICT OF CALIFORNIA)

THE PRESIDENT OF THE UNITED STATES,

To The Honorable Judge of the District Court of the United States, for the Southern District of California, Southern Division:

GREETINGS:

Because in the records and proceedings, as also in the rendition of the judgment of a cause which is in the said District Court before you, between Louis Strada, plaintiff in error, and United States of America, Defendant in error, a manifest error has happened to the great damage to the said defendant, Louis Strada, plaintiff in error, as by his complaint appears, we being willing that error, if any, should

be duly corrected, and full, speedy justice done to the parties aforesaid, in this behalf, do commend, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with the things concerning the same to the United States Circuit Court of Appeals, for the Ninth Circuit Court, together with this Writ, so that you have the same at San Francisco, in the State of California, within thirty (30) days from the date hereof, in the said Circuit Court of Appeals to be t hen and there held, that records and proceedings aforesaid being inspected, the said circuit court of Appeals may cause further to be done therein to correct the errors, what of right, and according to the laws and customs of the United States should be done.

WITNESS THE HONORABLE CHIEF JUSTICE, William Howard Taft, Chief Justice of the United States, this 4th day of November, 1921.

(Seal) Chas. N. Williams

Clerk of the District Court of the United States, in and for the Southern District of California, Southern Division.

By _____

Deputy Clerk.

THE ABOVE AND FOREGOING WRIT OF ERROR IS HEREBY ALLOWED.

Bledsoe

United States District Judge.

The within copy of Writ of Erro*r* is hereby, on the 1st day of November, 1921, lodged in the Clerk's Office

of the Said United States District Court, for the Southern District of California, Southern Division, for said defendant in error.

Clerk of the District Court of the United States in and for the Southern District of California, Southern Division.

By _____

Deputy Clerk.

(ENDORSED): No. 3287 Crim. IN THE DISTRICT COURT OF THE UNITED STATES for the SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION. THE UNITED STATES OF AMERICA, Plaintiff, vs. LOUIS STRADA, Defendant. WRIT OF ERROR FILED Nov 5 1921 *Chas. N. Williams, Clerk* Wm U. Handy *Deputy* C. E. Burch and A. L. Wissburg, Attorneys for the Defendant. Recd copy of within this 10th day of November 1921 Mark L Herron Asst. U. S. Atty.

Form No. 689.

In the DISTRICT Court of the United States,
For the Southern District of California
Southern Division

THE UNITED STATES
vs.
Louis Strada

INFORMATION.
VIOLATING SECTIONs 3 and 21, Title II National Prohibition Act of October 28, 1919.

UNITED STATES OF AMERICA,
Southern District of California } ss:

Be it Remembered, That Robert O'Connor, the Attorney of the United States for the Southern District of California who prosecutes in behalf and with the authority of the United States, comes here in person into Court at this September Term thereof, and for the United States gives the Court to understand and be informed that one LOUIS STRADA, whose full and true name, other than as herein stated, is to the affiant unknown, late of the Southern Division, of the Southern District of California, heretofore, to-wit: on or about the 8th day of November, 1920, in the City of San Diego, County of San Diego, division, district and state aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did

knowingly, wilfully and unlawfully sell to one Hugh Rochefort certain intoxicating liquor fit for beverage purposes, to-wit: one-half pint of whiskey containing alcohol in excess of one-half of one per cent by volume, at and for the sum of Four ($4.00) Dollars, lawful money of the United States; in violation of Section 3, Title II of the National Prohibition Act of October 28, 1919.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

SECOND COUNT.

And the said Robert O'Connor, Attorney for the United States as aforesaid, does further give the Court to understand and be informed:

That LOUIS STRADA, whose full and true name, other than as herein stated, is to the affiant unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 8th day of October, 1920 to and including the 8th day of November, 1920, at San Diego, San Diego County, within the State, division and district aforesaid, and within the jurisdiction of the United States and of this Honorable Court, did knowingly, wilfully and unlawfully maintain a common nuisance, to-wit: a room, building and place, to-wit: Flora D'Italia Restaurant, at 5th & "I" Streets in said city, where intoxicating liquor, to-wit: wine and whiskey, containing alcohol in excess of one-half of one per cent by volume, were

sold, kept, bartered and given away; in violation of section 21 Title II of the National Prohibition Act of October 28, 1919.

contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Whereupon, the said United States Attorney for the District aforesaid prays the consideration of this Court here in the premises, and that due process of law may be awarded against the said LOUIS STRADA defendant, in this behalf to make him answer to the United States touching and concerning the premises.

Dated at San Diego, this 26th day of Sept., A. D. 1921.

Robert O'Connor
United States Attorney for the Southern District of California
Herbert N. Ellis
Assistant United States Attorney

UNITED STATES OF AMERICA,
ss:
Southern District of California

I, GEORGE SEARS, Police Officer for the City of San Diego, being sworn, do say that the foregoing information is true as I verily believe.

George Sears

Subscribed and sworn to before me this 26th day of Sept., A. D. 1921

Chas. N. Williams
Clerk U. S. Dist. Court. (Seal)

(ENDORSED): *No.* 3287 Crim. U. S. District COURT Southern *District of* California Southern Division THE UNITED STATES *vs.* LOUIS STRATA INFORMATION *For* Viol: Secs. 3 & 21, Title II of the National Prohibition Act of October 28, 1919. Filed Sep. 27 1921 *Chas. N. Williams, Clerk.* Louis J. Somers *Deputy*

At a stated term, to-wit, the SEPTEMBER TERM, A. D., 1921, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of SAN DIEGO on Tuesday the 27th day of September in the year of our Lord, one thousand nine hundred and twenty one.

Present:

The Honorable Oscar A. Trippet, District Judge.

United States of America, Plaintiff)
)
vs.) No. 3287 Crim.
) S. D.
Louis Strada, Defendant)

An Information having been presented to the court by T. F. Green, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, and, pursuant to a motion made by said attorney, said Information was thereupon ordered filed.

At a stated term, to-wit: the SEPTEMBER Term, A. D., 1921, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room therein, in the city of SAN DIEGO on WEDNESDAY, the 28th day of SEPTEMBER in the year of our Lord, one thousand nine hundred and twenty one;

Present:

The Honorable OSCAR A. TRIPPET, District Judge.

United States of America, Plaintiff)
)
vs.) No. 3287 Crim.
) S. D.
LOUIS STRADA, Defendant)

This cause coming on at this time for arraignment and plea; H. N. Ellis, Esq., Assistant U. S. Attorney, appearing as counsel for the Government and defendant appearing in court with his attorney A. L. Wissberg and C. E. Burch, Esqs., and defendant having been called and arraigned and required to enter his plea, defendant thereupon enters his plea of NOT GUILTY and, good cause appearing therefor, it is by the court ordered that bail of defendant be fixed in the sum of $1000.00 and case set for trial on September 29, 1921.

At a stated term, to-wit: the SEPTEMBER TERM, A. D., 1921, of the District Court of the United

States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of SAN DIEGO on FRIDAY, the TWENTY-EIGHTH day of OCTOBER in the Year of our Lord, one thousand nine hundred and twenty-one;

Present:

The Honorable BENJAMIN F. BLEDSOE, District Judge.

United States of America, Plaintiff,)
)
vs.) No. 3287 Crim.
) S. D.
LOUIS STRADA, Defendant.)

This cause coming on at this time for trial; H. N. Ellis, Esq., Assistant U. S. Attorney, appearing as counsel for the Government and defendant being present in court with his attorneys A. L. Wissburg and C. E. Burch, Esqs. and now, good cause appearing therefor, it is by the court ordered that this cause be continued to the hour of two o'clock P. M. for trial and now, at the hour of two o'clock P. M. this cause coming on for trial and all parties interested being present as at the morning session and J. R. Christopher being also present in his official capacity as shorthand reporter of the testimony and proceedings and counsel for the respective parties having announced their readiness to proceed with the trial of this cause and the court having ordered that this cause be proceeded with and that a jury be impanelled herein; and

The following twelve names having been drawn from the jury box, to wit: Edward A. Powell; William H. Morse; Elias Lasenbury; Chas. H. Austin; Walter Stephens; Frank L. Doolittle; David F. Garrettson; Franklin E. Black; John N. Haskell; Duncan M. Hartman; Claude E. Agard and Chas. F. Atkinson; and

Said jurors having been called and sworn on voir dire; and passed for cause; and

Chas. F. Atkinson, William H. Morse and Claude E. Agard having been respectively and separately peremptorily challenged by the defendant and by the court excused; and

The three following names having been drawn from the jury box, to wit: Paul Schiefer; Emil G. Schnepp and Frederick M. Sumner and said jurors having been called and sworn on voir dire and passed for cause and said jury having been accepted and sworn in a body as the jury to try this cause and said jury as so impanelled and sworn consisting of the following named jurors, to wit:

THE JURY

1. Edward A. Powell
2. Emil G. Schnepp,
3. Elias Lazenbury,
4. Chas. H. Austin,
5. Walter Stephens,
6. Frank L. Doolittle,
7. David F. Garrettson,
8. Franklin E. Black,
9. John N. Haskell,
10. Duncan M. Hartman,
11. Paul Schiefer,
12. Frederick M. Sumner.

And said jury having received the admonition that during the progress of this cause they are not to

permit other persons to talk to them nor themselves talk to other persons about this cause, or anything connected with this cause, and that, until said cause is finally submitted to them for their consideration under the instructions of the Court they are not to talk with each other about this cause or anything therewith connected, thereupon said cause is continued to ten o'clock A. M. October 31st, 1921, for further trial.

At a stated term, to-wit: the SEPTEMBER TERM, A. D., 1921, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of SAN DIEGO on MONDAY, the THIRTY-FIRST day of OCTOBER in the Year of our Lord, one thousand nine hundred and twenty-one;

Present:

The Honorable BENJAMIN F. BLEDSOE, District Judge.

United States of America, Plaintiff,)
)
vs.) No. 3287 Crim.
) S. D.
LOUIS STRADA, Defendant.)

This cause coming on at this time for further trial; H. N. Ellis, Esq., Assistant U. S. Attorney, appearing as counsel for the Government and defendant Louis Strada being present in court on bail with his attor-

neys C. E. Burch and A. L. Wissburg, Esqs. and J. R. Christopher being also present in his capacity as official shorthand reporter of the proceedings and trial; and counsel for the respective parties having announced their readiness to proceed with the trial of this cause and the court having ordered that this cause be proceeded with; and

V. M. Mossholder, a witness herein, having been called, sworn, and having testified on behalf of the Government; and

J. J. Finnigan and Hugh Rochefort having separately and respectively been called and sworn and having respectively and separately testified on behalf of the Government; and

Now, upon motion of said H. N. Ellis, Esq., there were offered and admitted in evidence the following exhibits, to wit:

U. S. Ex. No. 1—Small china cup

U. S. Ex. No. 2—Small china cup

U. S. Ex. No. 3 for Identification—1/2 pint bottle of whiskey.

And James C. Byers and George M. Sears, witnesses herein, having been separately and respectively called and sworn and having separately and respectively testified on behalf of the Government; and

Now, upon motion of said H. N. Ellis, Esq. there were admitted in evidence the following exhibits, to wit:

U. S. Ex. No. 3—1/2 pint bottle of whiskey previously marked for Identification.

U. S. Ex. No. 4—Small drinking glass,

U. S. Ex. No. 5—Small drinking glass,

U. S. Ex. No. 6—Quart mason jar containing small quantity of liquor

And thereupon the Jury having received the admonition that during the progress of this cause they are not to permit other persons to talk to them nor themselves talk to other persons about this cause or anything connected with this cause, and that, until said cause is finally given to them for consideration under the instructions of the court, they are not to talk with each other about this cause, or anything connected therewith; the said court declared a recess to the hour of two o'clock P. M. for further trial; and

Now, at the hour of two o'clock P. M. the court having reconvened and all parties interested in this cause being present as at the morning session and counsel having announced their readiness to proceed with the trial of this cause and the court having ordered that this cause be proceeded with and

H. N. Ellis, Esq., Assistant U. S. Attorney, appearing on behalf of the Government, having made a motion for attachment for witness H. H. Kinny, and said motion having been denied by the court; and

R. W. Chadwick, having been called, sworn and having testified on behalf of the Government and now,

At the hour of 2:41 o'clock P. M. the Government rests; and

Herbert N. Ellis, Esq., having been called, sworn and having testified on behalf of the Defendant and

Louis C. Strada, having been called, sworn and having testified on behalf of the Defendant; and

Mrs. Cathrine Strada having been called, sworn and having testified on behalf of the defendant; and

Thereupon the Defendant rests and the testimony closes; and

Said H. N. Ellis, Esq. having argued to the jury on behalf of the Government and A. L. Wissburg, Esq. having argued to the court on behalf of the Defendant and said H. N. Ellis, Esq. having argued in rebuttal; the

Court thereupon instructs the jury with respect to the law involved in this cause and———Kilty having been duly sworn to take charge of said jury during the deliberations of its verdict and the jury having retired to deliberate upon its verdict; and

Now, at the hour of six o'clock P. M. all being present as before and the said jury having returned into the court room and the court having stated that the jury is present and upon being asked if it has agreed upon a verdict and said jury having replied that it was unable to agree on the first count but had reached a decision on the second count, and upon being requested to present its verdict on the second count and said verdict as so presented and read by the clerk being as follows, to-wit:

"UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION United States of Amer-

ica, Plaintiff vs. Louis Strada, Defendant. No. 3287 Crim. We, the Jury in the above entitled cause, find the defendant, Louis Strada———— as charged in the first count of the Information and GUILTY as charged in the second count of the Information. San Diego, California, October 31, 1921, John N. Haskell, Foreman.

And the court having discharged said jury with thanks and the court having allowed said defendant to go on bond heretofore given, said cause is continued to the hour of 9:30 o'clock A. M. November 1st, 1921, for sentence.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

United States of America, Plaintiff,	)	
vs.	)	No. 3287 — Crim.
Louis Strada, Defendant.	)	

We, the Jury in the above entitled cause, find the defendant, LOUIS STRADA,————————as charged in the first count of the Information; and Guilty as charged in the Second count of the Information.

San Diego, California, October 31, 1921.

John N. Haskell
Foreman

Filed Oct 31 1921 *Chas. N. Williams, Clerk* Wm. U. Handy *Deputy.*

At a stated term, to-wit: the SEPTEMBER TERM, A. D. 1921 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of SAN DIEGO on TUESDAY, the FIRST day of NOVEMBER in the Year of our Lord, one thousand nine hundred and twenty one;

Present:

The Honorable BENJ. F. BLEDSOE, District Judge.

United States of America, Plaintiff,)
)
vs.) No. 3287 Crim.
) S. D.
LOUIS STRADA, Defendant.)

This cause coming on at this time for sentence; H. N. Ellis, Esq., Assistant U. S. Attorney, appearing as counsel for the Government and defendant Louis Strada being present in court on bail with his attorneys C. E. Burch and A. L. Wissburg, Esqs. and motions having been made by A. L. Wissburg, Esq., attorney as aforesaid for (1) Arrest of Judgment (2) To set aside verdict, (3) for new trial and (4) That pronouncement of judgment be continued to November 3rd, 1924 in order that counsel might present motions as aforesaid in writing, and all of

said motions as aforesaid being denied by the court, the court now pronounces sentence upon said defendant for the offence of which he now stands convicted, namely, violation of the National Prohibition Act of October 28, 1919, and it is the judgment of the court that said defendant stand committed to the San Diego County Jail for the term and period of one year on the second count and said A. L. Wissburg, Esq. having excepted to the court's denying motions as aforesaid and to judgment and said attorney having made a motion that a stay of execution be granted defendant herein, it is by the court ordered that said motion for stay of execution be denied and that defendant be remanded to the custody of the U. S. Marshal.

41-438

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

United States of America, Plaintiff,	)	
	)	
vs.	)	No. 3287 Crim.
	)	S. D.
	)	
Louis Strada, Defendant	)	

I, CHAS. N. WILLIAMS, Clerk of the District Court of the United States, for the Southern District

of California, do hereby certify the foregoing to be a full, true and correct copy of an original Judgment entered in the above entitled cause; and I do further certify that the papers hereto annexed constitute the Judgment Roll of said cause.

ATTEST MY HAND AND SEAL OF said District Court this 12th day of November A. D. 1921.

(S E A L) CHAS. N. WILLIAMS, Clerk,
By Wm. U. Handy
Deputy Clerk.

(ENDORSED): No. 3287 Cr. In the District Court of the United States for the Southern District of California Southern Division. United States of America, vs. Louis Strada. JUDGMENT ROLL. Filed Nov. 12 1921 Chas. N. Williams *Clerk* By Wm. U. Handy *Deputy Clerk* Recorded Minute Book No. 41 Page 438

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

No. 3287 Crim.

The United States of America, Plaintiff, vs. LOUIS STRADA, Defendant.	) PETITION FOR WRIT OF ERROR OF LOUIS STRADA IN CASE NO.3287.

Comes now your petitioner, Louis Strada, defendant in the above entitled cause and brings this, his

petition for Writ of Error to the District Court of the United States in and for the Southern District of California, Southern Division, and in that behalf says:

That on the 31st day of October, 1921, there was given, rendered in the above entitled action, a verdict against your petitioner, wherein and whereby your petitioner, the said Louis Strada, was found guilty on the Second count in the information, Numbered 3287 Crim., of the above entitled cause.

That thereafter, towit, on the 1st day of November, 1921, your petitioner was sentenced as follows: To be imprisoned in the County Jail at San Diego, for the period of twelve (12) months on the Second count.

And your petitioner says that he is advised by counsel, and avers that there was and is manifest error in the record and proceedings had in such case, and in the making, giving, rendition and entry of such judgment and sentence, to the great injury and damage of your petitioner, all of which errors will be more fully made to appear by examination of said record, and by examination of the Bill of Exceptions to be hereinafter, by your petitioner rendered and filed, and in the assignment of errors hereinafter set out; and to the end hereafter that said judgment and sentence and proceedings may be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, your petitioner now prays:

That the Writ*e* of Error may be issued, directed there, from the District Court of the United States for the Southern District of California, Southern Division, returnable according to law and practice of the Court, and that there may be directed to be returned, pursuant thereto, a true copy of the Record, Bill of Exceptions, Assignment of Errors, Judgment Roll, and all proceedings had and to be had in said cause; that the same may be moved into the U. S. Circuit Court of Appeals, for the Ninth Circuit, and to the end that the error, if any has happened, may be duly corrected, and full and speedy justice be done your petitioner, AND

Your petitioner now makes the Assignment of Errors attached hereto, upon which he will rely and which will be made to appear by a return of said record, in obedience to said Writ.

WHEREFORE YOUR PETITIONER PRAYS, the issuance of the Writ*e* of Error as herein prayed for, and prays that the Assignment of Errors annexed hereto may be considered as an assignment of Errors upon the Writ*e*, and that judgment rendered in this cause may be reversed and held for nought, and that said cause may be remanded for further proceedings, and that he, the said petitioner be awarded a Super*c*edeas and stay of execution upon said judgment, and all necessary processes and that he be admitted to bail.

A. L. Wissburg.
C. E. Burch
Attorneys for the Defendant.

(ENDORSED): No. 3287 Criminal. In the District Court of the United States for the Southern District of California Southern Division The United States of America, Plaintiff vs. LOUIS STRADA, Defendant PETITION FOR WRIT OF ERROR OF LOUIS STRADA, in Case No. 3287 Filed November 4 1921 Chas. N. Williams Clerk C. E. Burch & A. L. Wissburg, Attorneys for Defendant

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

No. 3287 Crim.

THE UNITED STATES OF AMERICA, Plaintiff, vs. LOUIS STRADA, Defendant.	ORDER ALLOWING WRIT OF ERROR AND SUPERCEDEAS. In Case No. 3287

Comes now Louis Strada, Petitioner and Defendant above named, and C. E. Burch and A. L. Wissburg, his attorneys, and move the Court for an order allowing the Writ of Error and Supercedeas to be granted said petitioner and defendant, Louis Strada, AND

PURSUANT TO SAID MOTION, and upon filing the petition for Writ of Error, and the Assignment of Errors, IT IS HEREBY ORDERED, and this does

hereby order and direct that a Writ of Error be and hereby is allowed, to have reviewed in the United States Circuit Court of Appeals, for the Ninth Circuit, the verdict and judgment heretofore entered herein, AND

IT IS FURTHER ORDERED AND DIRECTED, that pending decision upon said Writ of Error, the Supercedeas prayed for by the defendant in his petition for Writ of Error, prayed for herein, is hereby allowed, and that execution of said judgment and decision is hereby stayed, and

IT IS FURTHER ORDERED AND DECREED that the defendant, Louis Strada is admitted to bail in the sum of Twenty-five Hundred &———— 00/100 Dollars.

Done in open Court, this 5th day of November, 1921.

Bledsoe

U. S. District Judge, in and for the Sou. District of California, Sou. Division.

(ENDORSED): No. 3287 Crim. IN THE DISTRICT COURT OF THE UNITED STATES for the SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION The United States of America, Plaintiff vs. LOUIS STRADA, Defendant. Order allowing Writ of Error and Supercedeas. Filed Nov 5 1921 *Chas. N. Williams, Clerk* Wm. U. Handy *Deputy* C. E. Burch and A. L. Wissburg, Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

No. 3287 Crim.

- - - - - - - - - - - - - -

THE UNITED STATES OF AMERICA, Plaintiff,

vs.

LOUIS STRADA, Defendant

: ASSIGNMENT OF ERRORS

- - - - - - - - - - - - - -

Comes now Louis Strada defendant above named and plaintiff in error herein, by his attorneys and in connection with his petition for Writ of Error from the above-entitled Court permitting him to procure a Writ of Errors from the said Court, directed to the United States Circuit Court of Appeals before the Ninth Circuit and from the judgment and sentence made and entered in the above entitled action against Louis Strada, above named defendant and plaintiff in error and petitioner herein, now makes and files with his said petition the following assignment of errors herein, upon which he will rely for a reversal from the rulings of the Court specified herein and the said judgment and sentence upon said Writ, and which said Errors and each and every of them are a great detriment and injury and prejudice to the said de-

fendant, Louis Strada, and in violation of the rights conferred upon him, he makes the following assignment of errors, which he alleges occurred upon the trial of said cause, and to all of which he duly excepted at the time:

FIRST

The verdict is against the evidence.

SECOND

The verdict is against the law.

THIRD

The Court erred in over-ruling the objection to a question propounded on direct examination by Mr. Ellis to J. J. Finnegan, witness for the prosecution; said question, answer and ruling being as follows:

Question: Were you employed as Deputy Sheriff in the month of October, 1920.

Answer: Yes, sir.

Q. You heard what Mr. Mossholder said?

A Yes sir.

Q. Did you come to this place?

A. I went there first I believe about September 30.

Q. What did you do on that occasion?

MR. BURCH: I object to that as incompetent, irrelevant and immaterial

THE COURT: Over-ruled.

MR. BURCH: Not covered by the pleadings, September 30th.
THE COURT: Over-ruled.
MR. BURCH: Exception.
(See transcript of record Page——)

FOURTH

The Court erred in over-ruling the objection to a question propounded on direct examination by Mr. Ellis to J. J. Finnegan, witness for the prosecution; said question, answer and ruling, being as follows:
Q. He told you he was afraid to give it to you?
A. Yes, the waitor. I asked him why he was afraid.
MR. BURCH: I object to that as incompetent, irrelevant and immaterial, and doesn't have a tendency at all to bind Strada.
THE COURT: Over-ruled.
MR. BURCH: Exception.
(See transcript of record Page——)

FIFTH

The Court erred in over-ruling the objection to a question propounded on direct examination by Mr. Ellis to George M. Sears, witness for the prosecution; said question, answer and ruling, being as follows:
Q. Is this the seal that you put on?
A. That is the seal.
Q. Do you know what is in this bottle?

A. Whiskey, alcoholic liquor, supposed to be whiskey.
MR. BURCH: I object to the latter part of it.
THE COURT: Over-ruled.
MR. BURCH: Exception: I will stipulate it is not fit for beverage purposes.

(See transcript of record Page——)

SIXTH

The Court erred in causing the jury to assume that the whiskey mentioned in this case is intended for beverage purposes as indicated by the direct examination of George M. Sears, witness for the prosecution by Mr. Ellis; said question, answer and ruling being as follows:

MR. ELLIS: Q. Did you test it?
A. No, smelt of it.
MR. ELLIS: I offer this in evidence, your Honor, at this time, as United States Exhibit——.
MR. BURCH: For what purpose?
MR. ELLIS: For the purpose of evidence in the case, of liquor that was purchased by the witness, Rocheford, as whiskey.
Q. Do you dare test that?
A. I can tell by the whiskey. I know it is whiskey. We found there a jar that had liquor in it, the same thing that we found in the place after we searched it.
MR. ELLIS: We can make a test of this. Mr. Burch doesn't seem to be able to tell whether it has

more than one-half of one percent of alcohol. Does it contain more than one-half of one per cent.
MR. BURCH: I will stipulate that it contains more than one-half of one per cent alcohol. I won't stipulate that it is good for beverage purposes.
THE COURT: The jury will be entitled to assume, it is intended for beverage purposes. We will not indulge in refinements here that will make fools of us.
MR. BURCH: Exception to the ruling of the Court.
(See Transcript of record Page——)

SEVENTH

The Court erred in over-ruling the objection to a question propounded on direct examination by Mr. Ellis, George M. Sears, witness for the prosecution; said question, answer and ruling being as follows:
Q. How frequently have you seen, if at all, the defendant Strada about this place? How much time did you spend there on an average at his place
MR. WISSBURG: We object to that as immaterial.
THE COURT: Over-ruled.
MR. WISSBURG: Exception.
(See Transcript of Record Page——)

EIGHTH

The Court erred in sustaining the objection to a question propounded on direct examination by Mr. Wissburg to Louis Strada, defendant, said question, answer and ruling being as follows:

Q. Mr. Strada, along about the 7th day of October and on or about the 13th day of September, did you get a barrel of grape juice from the California Importing Company.

MR. ELLIS: I object to that as immaterial.

THE COURT: Sustained as immaterial; he is not charged with having grape juice.

MR. WISSBURG: Exception.

(See transcript of record, Page——)

NINTH

The Court erred in sustaining the objection of the District Attorney to a question propounded on direct examination by Mr. Wissburg to Louis Strada, defendant; said question, answer and ruling being as follows:

Q. How did you buy the grape juice?

MR. ELLIS: I object to that as immaterial.

THE COURT: Sustained.

MR. WISSBURG: Exception.

(See transcript of record, Page——)

TENTH

The Court erred in over-ruling the objection to a question propounded on cross-examination by Mr. Ellis to Louis Strada, defendant; said question, answer and ruling being as follows:

Q. You don't know whether you told this fellow to violate the law, or not either, did you?

MR. WISSBURG: I object to that as immaterial.
THE COURT: Over-ruled.
MR. WISSBURG: Exception.
A. I ain't got anything there, it is not up to me to tell him.
(see transcript of record, page——)

ELEVENTH

The Court erred in refusing to grant defendants motions orally made first, to arrest judgment, second, motion to strike the verdict as inconsistent, and not in accordance with the law or the evidence, and third, in over-ruling defendant's motion for a new trial, to all of which the defendant excepted.
(see transcript of record, Page——)

TWELFTH

The Court erred in rendering judgment against and in sentencing the defendant.

All of which the defendant objected to, and took exceptions from as will more fully appear from the Bill of Exceptions to be hereafter filed in this case.

Wherefore defendant, Louis Strada, by his attorneys, prays that the judgment of the District Court of the United States within and for the Southern District of California, for and on account of each one of the errors, assigned as aforesaid, and other manifest errors in the record in said cause in the United States of America, versus Louis Strada, in

said District Court be reversed and allowed; and that such further orders be made therein as may be just and proper in the premises and that said defendant be restored to all things which he may have lost by reason of said judgment of said District Court.

A. L. Wissburg
C. E. Burch
Attorneys for defendant.

(ENDORSED): No. 3287 Crim. IN THE DISTRICT COURT OF THE UNITED STATES for the SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION The United States of Amer*cia,* Plaintiff, vs. LOUIS STRADA, Defendant Assignment of Error Filed November 4 1921 Chas. N. Williams, Clerk C. E. Burch & A. L. Wissburg, Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

THE UNITED STATES OF AMERICA, Plaintiff,	
-vs-	No. 3287 Criminal. BILL OF EXCEPTIONS.
LOUIS STRADA Defendant,	

BE IT REMEMBERED, that on the 31st day of October, 1921, Herbert N. Ellis, Esquire, Assistant

(Testimony of V. M. Mossholder.)

United States Attorney, appearing for plaintiff; and A. L. Wissburg, Esquire and Charles E. Burch, Esquire, appearing for defendant, and defendant appearing in person, the following proceedings were had:

THE COURT: United States versus Louis Strada.

- o O o -

V. M. MOSSHOLDER,

a witness called on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By MR. ELLIS:

I am a deputy sheriff. I do not know the defendant personally. I have seen him. I saw him at the Strada restaurant, known as the Flor de Italia, located at 5th and I. Street, San Diego, California when I visited the restaurant October 3 of last year. Mr. Finnegan and I went in. I bought some sandwiches and Mr. Finnegan bought some wine. The wine was bought by the drink. Mr. Finnegan paid Fifty ($.50) Cents for it. I did not have any conversation with the defendant. The defendant came in while we were eating our lunch. He came in the side door and went around; there is a sort of arch-way in the middle and a row of tables; he came in the side door and came around into the kitchen. A man picked up the money and walked away. I do not know what he did with it. I didn't see him check it up in the cash register.

(Testimony of V. M. Mossholder.)

CROSS EXAMINATION

BY MR. WISSBURG:

A man named Joe took the money and walked off. I never saw him before that week. I didn't get the drink from Mr. Strada. I didn't order it from him. I do not know whether the things served me was Joe's property or the property of Mr. Strada. It was served in that house. I never paid for it, Mr. Finnegan did. I went in this place for the purpose of securing evidence if I could. I drank it up there. I testified in this matter before the Commissioner. I couldn't say by the taste whether the wine contained more than one half of one per cent alcohol or not. I could not state that now, not without testing it to the best of my ability. I have no way of testing the wine now. I have tasted wine before. This tasted like ordinary wine. I have tasted grape juice frequently. I imagine this was grape juice in fermented form, I mean that it contained alcohol, while I don't think that grape juice when crushed out of grapes contains much alcohol, practically none, I would say. I would say that the material or liquid that I drank that time contained more than one half of one per cent alcohol. That is the reason upon which I base my answer. I stated before the Commissioner that if I wasn't mistaken that it contained more than one half of one per cent alcohol, I thought it did. My recollection of the alcoholic contents was better when I testified before the

(Testimony of V. M. Mossholder.)

commissioner than it is today. I could not swear under oath that the alcoholic contents of this wine was more than one-half of one per cent.

RE-DIRECT EXAMINATION

BY MR. ELLIS:

I do not know what connection the man had with the place, who served me the drinks. He was simply waiting on the table at that time. I don't know whether he was a partner or what he was, what he had to do with it. When I saw Mr. Strada there he did not serve the guests. Mr. Strada did not serve me. The man who served me was serving other guests.

RE-CROSS EXAMINATION

BY MR. WISSBURG:

Mr. Strada ran the cafe and restaurant there. He served meals.

BY THE COURT:

When you went in there what did you ask for? A. When we went in there we asked for wine and that is what the waiter brought us in response to our request. He served it in teacups and it tasted like wine.

BY MR. WISSBURG:

I did not state we asked for Dago red. We did not state any particular kind of wine. We did not know he was bringing us Dago red. He said "All right" and brought in what I called Dago red; that is

(Testimony of V. M. Mossholder.)

what I call the name of the wine he brought in although we did not state any particular kind of wine, we simply asked for wine. I have drank various wines. Dago red is wine that contains more than one half of one per cent alcohol. I didn't say he was bringing wine when we called for wine. I asked for wine and that is what he brought me. Dago red looks like red grape juice.

~~THE COURT:~~

~~So is ink red, a certain kind of ink.~~

B. F. B.

- o O o -

J. J. FINNEGAN

a witness called on behalf of the United States, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

I was a deputy sheriff in October, 1920. I went to this place, this restaurant, about September 30. I heard what the witness, Mr. Mossholder, said.

Q. What did you do on that occasion?

MR. BURCH: Objected to as incompetent, irrelevant and immaterial.

THE COURT: Overruled.

MR. BURCH: Not covered by the pleadings September 30.

THE COURT: Overruled.

MR. BURCH: Exception.

(Testimony of J. J. Finnegan.)

I first went to the front of the Cafe and spoke to Mr. Strada. He told me to go to the back room which I did. I asked Mr. Strada if he could fix me up for a little drink. He asked me who I was. I told him I had been there several times before. He told me to sit down and asked me what kind of drink I wanted. I first told him I wanted whiskey. He said he was all out of that but had a little wine. I asked him how much it was and he said he usually charged seventy-five cents but would give it to me for fifty cents. I said all right to give it to me, which he did. I was then in the rear of the room on the right hand side of the restaurant which is located on Fifth and I Street on the Northwest corner, when he served that to me. I am talking about the defendant Mr. Strada. I went there the following night. I ordered a drink from a big fat fellow. Strada was in the front part of the restaurant. I got wine. The waiter told me that he was afraid to give it to me.

MR. BURCH: I object to that as incompetent, irrelevant and immaterial. It does not have a tendency at all to bind Strada.

THE COURT: Overruled.

MR. BURCH: Exception.

I asked him why he was afraid. He told me that I didn't look good to him. I waited at the table and he served me with wine. I know what wine is. I paid fifty cents a cup. It was served in a little tea cup. I had about 8 or 9 cups of the wine.

(Testimony of J. J. Finnegan.)

Q. Did you feel any effects of it?

A. I think I did, you bet. The effect it had on me was that I was about half intoxicated when I left the restaurant. I did not notice Strada when I went out. The last recollection I had he was there. I went there again on October 3rd with Mr. Mossholder. Mr. Mossholder and I went in the side entrance. We ordered wine. We got one drink of wine at that time. I paid fifty cents a cup; there were two cups. I don't remember seeing Strada there that time. The first time that I went in that restaurant I saw this other man in there. Strada didn't serve me; he told me to go to the rear of the store the first time where the big fellow served me. Strada has never sold me wine. Strada sent me back to the rear to get what I wanted. The man who served me the first evening was the man who served Mr. Mossholder and me the last time. When the waiter came in I told him I was speaking to the Boss and I wanted a drink. He wanted to know what boss I had been speaking to and I told him the boss up in front. Before serving me he went to the front of the building where the defendant was. I did not see him with the defendant. I was in a booth in the rear. He then came back and served me.

CROSS-EXAMINATION

BY MR. WISSBURG:

I was working from the sheriff's office when I went to that restaurant with Mr. Mossholder for the pur-

(Testimony of J. J. Finnegan.)

pose of getting evidence if I could. Mr. Strada did not serve me at any time that evening and I did not hear him tell the waiter anything about serving me. The waiter served me and took my money. I do not know what he did with the money. I did not see him put it in the till. He picked it up and carried it in his hand as far as I could see. I do not know whether he gave it to Mr. Strada or not.

The second evening I was there I had 8 or 9 cups. I went there for the purpose of securing evidence. I did not get a bottle because I did not ask for it. I did not have any drinks there before I went there the second time. Mr. Strada did not wait on me at all when I got the 8 or 9 cups. I call that which was served me Dago red. I do not know the different kinds of Dago red, as to the quantity of alcoholic contents.

I am an automobile salesman and have been for about seven years. I had been engaged in working with the sheriff in getting evidence about drinks for seven months at the time I went to Mr. Strada's. I did not take any of the drinks out of the cups. I drank every bit of it. I can not state what per cent of alcohol that contained. I have no idea what per cent it contained.

RE-DIRECT EXAMINATION

BY MR. ELLIS:

The drink that I got when I went with Mr. Mossholder was the same kind of wine I had purchased

(Testimony of J. J. Finnegan.)

at the time when I drank 8 or 9 cups of it. It was the same stuff. I did not feel any effect of this one cup. By the taste of it I think it was the same stuff.

RE-CROSS EXAMINATION

BY MR. WISSBURG:

I did not get any whiskey there. I did not speak to Mr. Strada about whiskey. Mr. Strada was in the front all the time that I was in the rear. I was never served any whiskey.

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HUGH ROCHEFORD.

a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

I am a police officer of the city of San Diego, and was on October 8, 1920, and I know the defendant, Mr. Strada and know where his place of business is. I went to his place of business on the corner of Fifth and I. Streets on the North side of I. Street. I think it was about the 8th of November, yes, November 8th and it was about 8 o'clock at night. I had a party with me and we went to the back and called for a drink. The party with me was woman, I do not know who she was. She asked the waiter, whose name is Bornacorsi, for two drinks, and he brought it. I know what whiskey is. The waiter served us with two drinks of whiskey in little white earthen mugs, for which I paid fifty cents a piece, or $1.00 for the two drinks. United States Exhibits 1 and 2 are the little

(Testimony of Hugh Rocheford.)

white earthen mugs in which these drinks were served to us. They were about half full.

I got a bottle from the restaurant. The waiter sold it to me. I paid him $4.00 for this half-pint of whiskey. He first said he didn't want to give me any bottle to take out, but the woman told him it would be all right. She said she knew me. He brought me that bottle wrapped in paper. The price was $4.00 and I handed him the money. I do not know what he did with the money. I do not know whether he put it in his pocket or the cash register or what he did with it. I know that whiskey was in the bottle. I handed it to Sears and Chadwick after I walked out into the street. I had no dealings with Strada, but only with the waiter. United States Exhibit 3 for Identification was shown to the Court.

I know what is in that bottle, it is whiskey. I did not see Strada at his place of business that night. I did not feel the effects of the liquor I drank that night. I knew what it was. It was whiskey. I had one drink and the woman with me had two drinks.

CROSS EXAMINATION

BY MR. BURCH:

I know it contained one half of one per cent alcohol. I had drank whiskey for about eight years occasionally and this was whiskey. I went there with this woman for the purpose of getting evidence. I told Sears and Chadwick to follow me. I never saw the

(Testimony of Hugh Rocheford.)

defendant Strada until the time he was in the Commissioner's office. The liquor that was served us looked just about the same as this liquor in this bottle. This in the bottle is whiskey. I wouldn't want to drink this liquor. It might be fit for beverage purposes for some people, but it wouldn't be for me. I don't know whether Strada got the money or not. I don't know where he got the liquor from. He came through the entrance that leads into the center of the restaurant when he brought the liquor.

RE-DIRECT EXAMINATION

BY MR. ELLIS:

We ordered the drinks and after about long enough to pour them into cups and walk back, he served them. When he got the bottle he was gone about five minutes.

It was then stipulated by respective counsel that Strada, the defendant in this case, was the proprietor of the restaurant situated on the northwest corner of Fifth and I. Streets, at the time Rocheford purchased liquor, about the 8th of November, 1920.

- o O o -

DIRECT EXAMINATION

Mr. James C. Byers was then called as a witness on behalf of the plaintiff whereupon during which examination witness was asked if he had any information abut the Flor de Italia restaurant selling liquor there before he sent his men there, to which counsel for the defendant, Wissburg, offered objection on the

(Testimony of James C. Byers.)

ground that the question was incompetent, irrelevant and immaterial.

COURT: Are you going to claim there was any trapping of this defendant?

MR. WISSBURG: No, sir, we do not claim that.

THE COURT: All right. Sustained.

Whereupon the witness Byers was withdrawn.

GEORGE M. SEARS

a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

I am and was a police officer of the City of San Diego during October and November 1920.

Witness was then shown United Exhibit 3 for Identification and stated, referring to said exhibit:

This Exhibit #3 I first saw on November 8th about 9 P. M. Officer Chadwick and I at that time got this bottle from Officer Rocheford, as he came out of the Flor de Italia Restaurant. I sealed it and kept it in my possession until it was turned over to the United States Commissioners' Court. That seal now on the bottle is the seal that I put there.

Witness was then asked if he knew what was in this bottle, to which he answered:

There is whiskey in the bottle, alcoholic liquor supposed to be whiskey.

(Testimony of George M. Sears.)

MR. BURCH: I object to the latter part of it.

THE COURT: Denied. Overruled.

MR. BURCH: Exception. I will stipulate it is not fit for beverage purposes.

We searched Officer Rocheford before he went into the place, took him there in a machine, let him out and watched him meet this woman, and followed him down the street to the restaurant and watched the restaurant, and when he came out we went up to him and secured this bottle from him. I know that he didn't have this bottle in his pocket when he went into the restaurant and that he did have it when he came out. We found there a jar that had liquor in it, the same thing that we found in the place after we searched it.

It was stipulated that on the behalf of the defendant that the liquor contained in United States Exhibit #6 contained more than one half of one per cent alcohol, but there was no stipulation that it was good for beverage purposes.

THE COURT: The jury will be entitled to assume that it was intended for beverage purposes. We will not indulge in refinement that will make fools of us.

MR. BURCH: Exception to the ruling of the Court.

United States Exhibit #3 for Identification was then offered and received in evidence as plaintiff's exhibit 3. Officer Chadwick and I went through the kitchen after securing the bottle from Officer Rocheford. When we entered the kitchen, there was a

(Testimony of George M. Sears.)

waiter throwing two glasses full of alcoholic liquor into soup. It was of that stuff, and those are the two glasses he dumped it out of.

The two glasses were then introduced as United States Exhibits 4 and 5 and received as evidence.

The cook was Bonacourci. The jar was sitting on the table in the kitchen, and the two glasses were sitting on a table back of a partitition in the main dining room. This other is some sort of a concoction. I wouldn't testify that it is alcohol. The jars were clean at the time, but after I took it into my possession it worked up and run over. I made no test of it. I had a conversation with Strada about a week after we had arrested Bonacorci for selling this liquor, told him what kind of liquor it was, what rotten stuff it was and he said that he had been sick for a few days at about the time of Bonacourci's arrest and made some kind of an excuse. He said Bonacorci was working for him there in the restaurant and Bonacorci told me that too when I arrested Bonacorci. I told Strada that Bonacorci had said "Why don't you arrest Strada, I am only working for him." Then Strada said he didn't tell him to violate the law or something to that effect.

A jar or can was then introduced as United States Exhibit #6 and received as evidence. This can was about one fourth full of liquor and the witness stated that it was whiskey. The contents of the can was whiskey.

(Testimony of George M. Sears.)

CROSS EXAMINATION.

BY MR. BURCH:

Immediately after the arrest of Bonacorci, I asked the cook where Strada was. He did not tell me. Referring to United States Exhibit #3 witness testified as follows:

I took this from Mr. Rocheford. I searched him before he went in the restaurant and kept him in sight so that no one could have given him the bottle and when he came out I found the bottle on him. Rocheford told me he got the bottle from the waiter in the Flor de Italia restaurant. He described the waiter to us. He did not know his name. He told me how much he paid for the bottle of liquor.

RE-DIRECT EXAMINATION

BY MR. ELLIS:

Q. How frequently have you seen, if at all the defendant Strada about this place, how much time did you spend there on an average at his place?

MR. WISSBURG: We object to that as immaterial, Your Honor.

THE COURT: Overruled.

A. Sometimes we got sent down there two or three times a week, sometimes were by there every day; complaints on this place for bootlegging for the last two years, drunks came in and out of there; they did a lot of business at that place and Strada is practically running it all the time.

(Testimony of George M. Sears.)

MR. WISSBURG: We object to the answer and ask the jury be instructed to disregard the statement made.

THE COURT: About complaints being made about bootlegging, the fact that they got down there frequently is not, and that Strada was there was material.

We were down there every day on our regular police duty, in that neighborhood, sometimes half a dozen times a day. I don't remember going to the place prior to the 8th day of November. I saw Strada there every day and knew that he was the proprietor of the place. He owned and managed it.

RE-CROSS EXAMINATION

BY MR. BURCH:

It came a part of my regular duties to keep my eye on lower Fifth Street along about 5th and I. Streets. We have searched Strada's place a number of times, but did not find anything. We found glasses on the tables and bottles lying around through the place that had a teaspoonful of such a matter of whiskey and alcohol in them.

Reference was then made to three jars then in the court room containing some liquid. These jars were not introduced in evidence. Witness stated:

I didn't say that that is whiskey in those jars. Strada has been arrested about half a dozen times I think prior to this time. I cannot state them, but to the best of my knowledge he has. I can't tell when he was arrested before. It was in 1920 or 1921.

(Testimony of George M. Sears.)

I had a talk with Strada some days after he was arrested. I told him there was a warrant for him and Bonacorci and that the hearing was set in the Commissioners Court. I told him about the sale of whiskey to Rocheford. I got the bottle and evidence there and told him what kind of liquor it was. I told him it was rotten stuff, a man that put that stuff out and was selling it ought to be ashamed of himself. He had not been arrested at that time. I told Strada that Bonacorci said when we arrested him "why don't you arrest Strada, who is the boss of this place, he is maintaining it." Those were the words as I remember them. Strada said he had been sick for four or five days, and hadn't been down to the place. He didn't say that he didn't know about it. He didn't say anything in response to what I told him that the waiter told me.

BY MR. BURCH:

I think Strada told us that Bonacorci was working for him as a waiter in the restaurant—that he had told him not to violate the law.

- o O o -

R. W. CHADWICK

A witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ELLIS:

I was a police officer in the months of October and November, 1920. I accompanied Mr. Sears on the

(Testimony of R. W. Chadwick.)

occasion on which he testified. Officer Rocheford went into the place and when he came out he walked up to the corner and we stopped him, searched him and found a pint bottle of liquor in his pocket. He was with a lady at the time. We searched him earlier in the evening. He was in our sight from that time until he went into the restaurant. He was in the restaurant about 45 minutes. I was sitting in a machine across on the other corner. He had gone about 30 feet when we searched him. United States Exhibit #3 is the bottle that I took from Rocheford's pocket that morning. I know what is in that bottle. There is whiskey in that bottle. I took United States Exhibit #6 from the shelf along side the range—that was in a teapot at the time, while Officer Sears was getting the glasses from the dining room. Officer Sears went to the tables to where Mr. Rocheford and this lady had been served, and also to a table where there was another party being served, and I went into the kitchen. As I went into the kitchen the cook had taken a cup which also had whiskey in it and poured the contents of this whiskey into a large kettle of soup that was cooking on the stove at the time, and right over from this stove were three shelves where a person would set pans or something on, and on the second shelf was this teapot, about that high, and the contents of the teapot I poured out. That is the same stuff, I know what it is; it is whiskey. It is the same

(Testimony of R. W. Chadwick.)

as in United States Exhibit #3 bottle. There was a waiter in the restaurant. I do not know his name. There were two Mexicans and two American people in there also. There were two people working there, a chef and a waiter. I have seen the defendant Strada in the place a number of times. I visited the place probably fifty times. We visited the place two or three times from the first of October until the 8th of November. I remember Strada being there on one occasion during that period. I remember talking to him that time. I never talked to him about this case. I was there when Officer Sears talked to him about the case. I told him the waiter wanted to know why we would arrest him and not arrest Strada as he was only working for Strada. That was a few days after the arrest. Strada told me that Bonacorci was working for him. I heard Officer Sears tell him that the time the hearing would be before the Commissioner, and that he was mentioned in the complaint also, and of maintaining the place. Mr. Strada stated at that time that he wasn't there, at the time that he was sick, but that this man, Bonacorci, was working for him.

CROSS EXAMINATION

BY MR. WISSBURG:

I did not hear all of the conversation between Mr. Strada and Sears. We searched Mr. Rocheford before he went in, and gave him marked money and we stood down the street about 100 yards from where

(Testimony of R. W. Chadwick.)

he was to meet this party. We watched Rocheford and saw him meet the woman and go into the restaurant together. I did not search the woman. We searched the place about two minutes after the transaction. I made no effort to look for the marked money. I couldn't say whether the marked money was in the cash drawer or not. It was not in Bonacorci's pocket. Sears and I worked in the neighborhood of lower Fifth Street quite a bit. We are in that neighborhood about an hour every evening. I do not wish to leave the Court and jury with the impression that we were merely hanging around to search this place. I have been in Strada's place a number of times. I have searched the place but did not find anything. We probably searched the place two or three times from the first day of October until November 8th. We did not find liquor or wine at the time we made these searches, but we didn't go into the cellar. I can remember finding there was some empty bottles some would have a small amount, and some would have a very very small portion of liquor. At that Mr. Strada thinks that stuff there was brought in by other people. During the time we were making these searches I referred to we didn't go where we should have went. I think that is the reason we did not find any liquor. We have never been in that cellar yet. The reason I say that I know we would have found something there is that we had information

(Testimony of R. W. Chadwick.)

from different sources. The gist of my testimony here is not from information received from other sources. I am testifying from facts I have gathered myself from my own investigation. I believe it is a fact that I would have found something in the cellar had I looked for it. To the best of my knowledge we would have found something; to the best of my ability it is a fact. Strada had been proprietor of this place quite a while before this. He told me he had been sick for four or five days during this week. That was a week or so after the arrest. I did not notify Mr. Strada at the time of the arrest of Bonacorci. It was some time after this that I notified Strada. It was about a week afterwards. I do not know where Bonacorci is now. I know who the woman was, but I didn't search her at all.

RE-DIRECT EXAMINATION

BY MR. ELLIS:

I don't know whether Strada had been served with process at the time I spoke to him. We told him his name was in the indictment in company with Bonacorci and Officer Sears told him at that time when his case, along with Bonacorci's would come before the commissioner. We made a search of Bonacorci, but did not find the marked money.

Both Strada and Bonacorci were charged with the offense at the same time before the Commissioner. The record of the Commissioner who issued the war-

(Testimony of H. N. Ellis.)

rant was thereupon produced in court and circumstances of same stated by the court as follows:

THE COURT: It shows a warrant for them both issued on the 10th day of November.

DEFENDANT'S CASE

DIRECT EXAMINATION OF H. N. ELLIS.

By MR. WISSBURG:

I am the Assistant District Attorney.

Q. On the 12th of September last year, was there or was there not a case pending in this Court against one Bonacorci, Joseph Bonacorci?

THE COURT: What had that got to do with this case?

MR. WISSBURG: We want to show that there was a case pending against Bonacorci. That Bonacorci has fled the jurisdiction and forfeited his bond in this case.

MR. ELLIS: Object to it as immaterial.

THE COURT: Yes, it is highly immaterial, and has nothing to do with this case at all. We are trying this man.

Q. Does the information in that case, Mr. Ellis recite the fact that the whiskey was bought from Bonacorci?

THE COURT: That is immaterial. We are trying this man in this case.

MR. WISSBURG: Note an exception to that.

- o O o -

(Testimony of Louis C. Strada.)

LOUIS C. STRADA, the defendant herein having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WISSBURG:

I am the proprietor of the Flor de Italia Restaurant at Fifth and I. Streets. On the 8th of October and during the 8th of November of last year, there was a man working for me by the name of Bonacorci. I do not know where he is now. I did not have any wine in my place about the 8th of October of thereabouts. I had what we call grape juice. I have grape juice. Would buy it by the barrel in San Francisco and sell it. I had grape juice in my possession all the time. I was dispensing grape juice at that time. I was dispensing it by the drink, and by the bottle and by the gallon. Any way they would call for it. Some young fellows would come in and call for Dago red; that means grape juice and I would give them grape juice. I never had any wine other than this grape juice. I do not know whether or not any wine was dispensed in my place. It was not dispensed with my knowledge. About the 8th of November, last year, I was sick. I had the flue and sore throat. I asked Bonacorci if he could run the place until I got well, two or three days, and if he couldn't I would get a man, because I couldn't work. I went home and went to bed. There was no liquor in my place when I left to go home. I did not

(Testimony of Louis C. Strada.)

tell him then about not violating the law, because they know it I didn't have anything there. I didn't have any reason to tell them.

The defendant being shown United States Exhibit #3 said,

I have not seen this bottle of whiskey before. I didn't see it in my place of business when I left on November 7th. I don't know whether it was there.

The witness was then shown United States Exhibit #6 and stated in reference thereto:

We have empty jars there. I did not see the whiskey now in that jar. I first knew that they got whiskey there on November 8th. Mr. Burch called up my wife. I was at home and in bed. He told her that there was trouble down in the restaurant. I came down town three days afterward. I think it was the 10th or 11th. I recall having seen Mr. Chadwick and Mr. Sears. I was going up to mail a letter at 5th and Market Street. I met the two officers and they told me what had happened. I told them I knew nothing at all, because I was at home. I told them, if he is in jail, let him stay there, because he had no right to do it. They do it to make money whatever I told them. I have been running this cafe for four or five years, and it is my means of livelihood.

CROSS EXAMINATION

BY MR. ELLIS:

The price of the grape juice was 25¢ a coffee cup. It was a regular coffee cup.

(Testimony of Louis C. Strada.)

United States Exhibits #1 and #2 were shown to the witness whereupon he stated that the coffee cups in which he served grape juice was three times larger than those.

I sometimes serve it in glasses; sometimes we have glasses, and sometimes in cups. Bonacorci was working for me. He was a dish washer. I don't know whether he served the guests there sometimes besides or not. He don't have any right to do it. The officers came to my place once in a while. I never remonstrated with the help about doing such things. I didn't pay much attention. I know I ain't got nothing there, I don't care if they go down in the basement or kitchen don't mind me much. I think I told Officer Sears that I told this man that they know they can't sell anything like that. I don't remember whether I told Officer Sears that I had told Bonacorci that I didn't want him to violate the law. I don't think I did; I don't remember. There is soldiers our of service come in under the influence of liquor and raise trouble there. Sometimes they would have a bottle of alcohol on them and put it on the table and order four cups of Dago Red and as soon as we brought the grape juice, they would put alcohol in it. I told the man that if anything happened like that not to serve them. No I had not warned Bonacorci about selling liquor there. They told me that Bonacorci was arrested, and I said "well if he did it is up to him."

(Testimony of Louis C. Strada.)

They told me that he was arrested for selling a half pint to an officer. I was at the restaurant practically all the time except the days that I was sick from eleven o'clock until nine or ten until I closed up. I sometimes leave the place for an hour or so but not more. I am managing the restaurant, and this man Bonacorci was washing dishes. When people came in and asked for Dago red I filled their orders and charged them two-bits for a big coffee cup. I have those kind of cups at my place (referring to United States Exhibits #1 and #2). Those cups came from my place. I did not know that there was a teapot in the kitchen containing liquor. It wasn't there when I left the place. Two sailors bought some whiskey from a man by the name of Fred Moore, he was a waiter in from at that time. He did extra work for me on Saturdays and Sundays. The time I was in the restaurant the man didn't sell liquor. I never cautioned Bonicorci about this event in my restaurant and did not tell him not to have that repeated. When I was home, then he might have sold it for himself to make some side money and things like that. He could have served it to guests at the time I was absent, not at other times. I was only absent three days in all. When I was there he never came out of the kitchen. Would go in in the morning and go home at noon.

(Testimony of Louis C. Strada.)

RE-DIRECT EXAMINATION

BY MR. WISSBURG:

We served black coffee there and used these cups. I have four or five dozen of them at the restaurant. When people would come in and ask for Dago Red, I would give them grape juice. They would pay two bits a coffee cup.

BY THE COURT:

I have three or four dozen drinking glasses there. They are water glasses. I serve the grape juice in coffee cups because the drinking glasses are too big. The cups were just right, the way I figured it, to get my profit out of it. A cupful looks better than half a glass when you serve it. All of my glasses are big water glasses. They are bigger than those glasses (Referring to United States Exhibits #4 and #5). Mr. Sears when I saw him, asked me if I knew what had happened at my place; I said "yes." He told me I was under arrest too and I had better go down to the Commissioners. I told him I would go down there in the morning and see. I told him I didn't have anything down there and if Bonacorci sold it, it was up to him. I told Sears when I left the place there wasn't any liquor there. All that I sold was grape juice. I never sold anything stronger than that. I mean if Bonacorci sold it, he had it himself and it was up to him. Sears then told me to go down to see the commissioner

(Testimony of Katherine Strada.)

RE-CROSS EXAMINATION

BY MR. ELLIS:

I used to have the wine glasses when I had a license At that time I had eight or nine of them altogether (Referring to United States Exhibits #4 and #5). The coffee cups are about the same size, a little larger I think and hold a little more. I don't know whether Sears and Chadwick told me that Conacorci said I was the one selling the liquor there. Bonacorci has been in this country about two years. I don't think he can understand English and cannot speak it. They did not tell me at the time that Bonacorci said I ought to be arrested along with him, because I was responsible. I don't remember if he did.

- o O o -

KATHERINE STRADA, a witness called on behalf of the defendant having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WISSBURG:

I am the wife of Mr. Strada. On November 7, of last year, Mr. Strada took sick. He was at home. He came home about 10:30 o'clock and about 1 o'clock he went to bed. He stayed in bed about two or three days. Mr. Burch called me up over the 'phone. Mr. Strada was in bed at that time. Defendant then rested.

That thereafter, on the 31st day of October, 1921 the jury returned a verdict finding the defendant guilty as alleged in the second count of indictment and disagreeing as to the first count in the indictment.

That thereafter to-wit on the first day of November, 1921, defendant being present in open Court with his attorneys, A. L. Wissburg and C. E. Burch, the Court duly and regularly pronounced sentence upon the defendant and adjudged that he be confined in the County jail in San Diego County of San Diego, State of California for a period of one year.

That thereafter, on the 5th day of November, 1921, the defendant duly and regularly filed in this Court a petition for Writ of Errors, accompanying the same with his Assignment and Specifications of Errors; that said Petition for Writ of Errors was thereafter allowed, and said Writ of Errors thereafter duly and regularly issued.

That the Court duly and regularly fixed a Supercedeas Bond in the sum of Twenty-five Hundred ($2500.00) Dollars. That upon the issuance of the Writ of Errors returnable before the United States Circuit Court of Appeals for the Ninth Circuit, a citation was duly and regularly issued herein.

That thereafter the Court duly and regularly entered its order in said case allowing the defendant herein time within which to prepare, serve and file his proposed Bill of Exceptions in the above entitled action.

That thereafter and on the 25th day of November, defendant served his proposed Bill of Exceptions. Thereafter the Court proposed certain amendments to the Bill of Exceptions which are herein above inserted. Said Bill is now submitted for approval and defendant respectfully prays and asks that the same be allowed.

A. L. Wissburg
Jas. E. O'Keefe
C H Van Winkle

Attorneys for Defendant

To Joe Burke, Esquire, United States Attorney,
Sir:

YOU WILL PLEASE TAKE NOTICE, that the foregoing constitutes and is the Bill of Exceptions proposed by the defendant as amended pursuant to suggestions of the Court in the above entitled action and that the defendant will ask the allowance of same.

A. L. Wissburg
Jas. E. O'Keefe
C. H. Van Winkle

THE ABOVE AND FOREGOING BILL OF EXCEPTIONS having been presented within the time allowed by law to the Court for settlement, and the same having been considered, the Court now hereby approves, settles and allows the same and orders it of record as the Bill of Exceptions herein.

Dated this 29th day of December, 1921.

Bledsoe

Judge

IT IS HEREBY STIPULATED that the foregoing Bill of Exceptions is correct; that the same may be settled and allowed by the Court.

A. L. Wissburg

Jas E O'Keefe

C. H. Van Winkle

Attorneys for Louis Strada, defendant and plaintiff in error.

Joe Burke

United States Attorney
By Herbert N. Ellis

Assistant United States Atty

RECEIVED COPY of the within proposed Bill of Exceptions this 1st day of December, 1921.

Joe Burke United States Atty.

Herbert N. Ellis assistant

(ENDORSED): *No.* 3287 Crim IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT *of* CALIFORNIA SOUTHERN DIVISION UNITED STATES OF AMERICA, Plaintiff, *vs.* LOUIS STRADA, Defendant. BILL OF EXCEPTIONS FILED Dec. 29, 1921 CHAS. N. WILLIAMS, Clerk. *By* Wm. U. Handy, *Deputy Clerk*

Original

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

No. 3287 Crim.

The United States of America,)
)
Plaintiff,)
)
vs.) COST BOND
)
LOUIS STRADA,)
)
Defendant.)

KNOW ALL MEN BY THESE PRESENTS, that I, Louis Strada, as Principal, and Maurice Bernardini and Maria Massa, as sureties, are held and firmly bound unto the United States of America, in the sum of Two Hundred & Fifty Dollars ($250.00) for the payment of which, well and truly be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this 5th day of November, 1921.

The condition of this obligation is such, that whereas, on the 5th day of November, 1921, by the consideration of the District Court of the United States for the Southern District of California, in a certain criminal cause, to-wit: a certain information against the above named Louis Strada for having maintained a nuisance,

(being Criminal Cause No. 3287) the said Louis Strada was adjudged and sentenced to a term of twelve months in the County at San Diego, California, and Whereas, upon the petition of the said Louis Strada, Benjamin F. Bledsoe, District Judge of the said United States for the Southern District of California, within this district, has allowed a writ of Error for the United States Circuit Court of Appeals for the Ninth Circuit to the said District Court upon the judgment and sentence aforesaid, and has ordered that such writ of error operate as a stay of proceedings under the said judgment and sentence, and Whereas, such writ of Error has accordingly issued:

Now Therefore, the condition of this obligation is such that if the said Louis Strada shall prosecute his writ to effect and answer all damages, fine and costs, including just damages for delay and costs and interest on Appeal, if he fails to make his plea good, then his obligation shall be void, otherwise shall remain in full force.

Louis C. Strada (Seal)
Principal
Maurice Bernardini (Seal)
(SEAL) Maria Massa (Seal)
Sureties

Signed & acknowledged before me this 5th day of Nov. 1921

Glen H. Munkelt
U. S. Commissioner

Subscribed and sworn to before me
this 5th. day of November 1921.
Glen H. Munkelt
United States Commissioner

Southern District of California ss.

Maurice Bernardini and Maria Massa each for himself and herself being duly sworn deposes and says: that he and she are worth the sum of Two Hundred and Fifty Dollars exclusive of property exempt from execution and over and above all debts and liabilities.

Maurice Bernardini
Maria Massa

(SEAL)

Subscrived and sworn to before me
this 5th day of November 1921.
Glen H. Munkelt
United States Commissioner.

(ENDORSED): Original No. 3287 Crim. In the District Court of the United States for the Southern District of California Southern Division The United States of America, Plaintiff, vs. LOUIS STRADA, Defendant. Cost Bond. Filed Nov 5 1921 *Chas. N. Williams, Clerk* Wm. U. Handy, *Deputy* C. E. Burch & A. L. Wissburg, Attorneys for Defendant. Approved Bledsoe Judge 11/5/21 B

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

No. 3287-Crim

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.
LOUIS STRADA,
Defendant.

PRAECIPE

To the Clerk of said Court:

Sir:

Please issue certified transcript on Writ of Error to the United States Circuit Court of Appeals, the same to include the judgment roll, Bill of Exceptions, Petition for Writ of Error, Order allowing Writ of Error, and fixing supercedious bond, Writ of Error, Bond on Writ of Error, Citation, Assignment of Errors, and this Praecipe.

A. L. Wissburg
Jas. E. O'Keefe
C. H. Van Winkle
Attorneys for Louis Strada, defendant and plaintiff in error.

(ENDORSED) 3287-Crim IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SOUTHERN DIVISION. THE UNITED STATES OF AMERICA Plaintiff vs LOUIS STRADA, Defendant PRAECIPE Filed Nov. 25 1921 *Chas. N. Williams, Clerk* R S Zimmerman *Deputy* A. L. Wissburg 411-14 Southern Title Building San Diego, California Attorney for Defendant

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

LOUIS STRADA,)
)
Plaintiff in Error.)
)
vs.)
)
The United States of America,)
)
Defendant in Error.)

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 68 pages, numbered from 1 to 68 inclusive, to be the Transcript of Record on Writ of Error in the above entitled cause, as printed by the plaintiff in error and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the judgment roll, bill of exceptions, petition for writ of error, order allowing writ of error, and

fixing supersedeas bond, writ of error, bond on writ of error, citation, assignment of errors and praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on writ of error amount to , and that said amount has been paid me by the plaintiff in error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this day of January, in the year of our Lord One Thousand Nine Hundred and Twenty-two, and of our Independence the One Hundred and Forty sixth.

CHAS. N. WILLIAMS,
Clerk of the District Court of the United States of America, in and for the Southern District of California.

By
Deputy.